

**7.2.10 Pre-Application**

Prior to formal application for major subdivision approval, the subdivider may present to Planning and Design Services for discussion a concept plan showing generally the boundaries of the proposed subdivision, the proposed street and lot pattern, dimensions, topography, proposed drainage pattern, north arrow, scale and any other pertinent information then known to the subdivider. The subdivider or his agent, or the Planning and Design Services staff, may request a conference to discuss the requirements of the Commission and of other public agencies, the improvements and uses of the subdivision and any potential problems involved in the proposed subdivision. Prior to filing a formal application for a major subdivision, a letter shall be sent from the developer/owner to all first tier property owners, neighborhood groups that have registered with Planning and Design Services to receive notice of development actions, metro council district representative and to PDS staff stating that a subdivision is being proposed and announcing a public meeting held by the developer/owner to discuss the proposed project. On receipt of said letter at the PDS office any pre-application file shall no longer be confidential. At time of filing a major subdivision application, the applicant shall provide a summary of the public meeting between the applicant and the adjacent property owners. The summary shall include a list of those invited, those in attendance and a summary of the issues discussed. The meeting shall be held no less than seven and no more than 30 days prior to filing the application.

**7.2.15 Major Subdivisions Requiring Change in Zoning/Form District**

The concept plan and pre-application conference are required when the subdivision application is accompanied by an application for a change of a zoning district map or a form district map with respect to any of the property within the proposed subdivision. See **Chapter 11** Procedures for specific information regarding the process required for these applications.

**7.2.20 Preliminary Plan Approval Process**

The subdivider must receive Commission approval of a preliminary plan in accordance with the following procedure:

- A. Formal Application and Submission - The subdivider shall file an application for preliminary plan approval on a form supplied by the Division, signed by the property owner or his/her agent, and shall submit therewith a preliminary plan prepared in conformance with the requirements of Part 5 hereof. No application shall be accepted unless it is complete and accompanied by the appropriate review fee. Applications shall be accompanied by supporting material determined appropriate by the Planning Director. The list of required supporting materials shall be available from the offices of the Commission. In addition, technical studies required by other applicable sections of this Land Development Code, including traffic, air quality, and hydro-geologic analyses shall be submitted. Failure to submit all required material may result in delay of the application review. Staff of the Division may require submission of information, material and documents beyond that required in this section as necessary to determine compliance with these regulations.
- B. Distribution of Plan - Upon receipt of the preliminary plan, the Division shall submit copies to interested public agencies and utility companies and obtain a written report or approval on the plan from each such agency or company. Notice of the proposed subdivision and date for the Technical Review Committee (TRC) meeting shall be provided to adjoining property owners and neighborhood groups that have registered to receive notice of development applications.
- C. Staff Review - The staff of the Division shall review the plan and shall consult with the affected cities, public agencies and utility companies to resolve any problems raised by the proposed subdivision. The staff shall then present its recommendations and the reports of the agencies and companies to the subdivider and adjoining property owners at the TRC meeting.
- D. Administrative Approval - Commission action may be taken by the Director of the Division or any authorized staff member of the Division if the plan or revision complies with **Chapter 6 Part 2** of these regulations and conforms to all zoning and form district regulations. Such action may not be taken until the expiration of the seven day petition period provided for in paragraphs 1 and 2, below. No staff member shall be required to approve any delegated item if they have reason to question its accuracy, or its compliance with any subdivision, zoning, form district or other regulation. Requested waivers and other items that are not appropriate for administrative approval shall be submitted to the Planning Commission or Committee of the Commission in accordance with paragraph 3, below.

1. Applicants may request LD&T review of TRC recommendations on forms supplied by the Division. Requests for review must be submitted within seven calendar days following the Technical Review Committee meeting at which the application is considered for approval. The request shall set out the item(s) for which the applicant is seeking LD&T review. The request will be considered for review at the first LD&T meeting following receipt of the request, or at a subsequent meeting if so requested by the applicant. Final action on the plan shall be taken in accordance with these regulations.
2. Other persons may request LD&T review of TRC recommendations. Petitions shall be filed on forms supplied by the Division and must be submitted within seven calendar days following the Technical Review Committee meeting at which the application is considered for approval. The petition shall set out the item(s) for which the petitioner(s) is seeking LD&T review. Petitions will be considered for review at the first LD&T meeting following receipt of the petition, or at a later meeting if agreed to by the Applicant. The applicant and petitioner shall be notified of the review date and item(s) to be considered during the review. Final action on the plan shall be taken in accordance with these regulations.
3. LD&T review of TRC recommendations shall address only specific items of the development proposal that:
  - a. do not receive a consensus recommendation through the TRC process,
  - b. are set out in a request for review by the applicant,
  - c. are set out in a petition request by other persons, or
  - d. are requested as waivers from current regulations.
4. The proposed subdivision shall be reviewed and action taken within ninety days of receipt of the completed application and the preliminary plan, unless this time limit is waived, in writing, by the subdivider. Approval shall be valid for one year unless otherwise provided by the Commission, and extensions may be granted by the Planning Commission. The developer shall submit a letter justifying the request for extension. The Planning Commission may grant requests for extension of expiration of the preliminary plan if the Commission finds that exceptional circumstances or extraordinary hardship justify such requests.

5. In the case of subdivisions being developed by sections, for the period within five years of original approval of the preliminary plan, extensions of approval shall be automatic for all sections so long as construction is in progress in any section. Beyond this five year period, an extension in accordance with Section 7.7.15 shall be required.

#### **7.2.25 Site Disturbance Permit**

No clearing of trees or ground cover, excavation or filling of land covered by a preliminary subdivision plan shall be performed except in accordance with a Site Disturbance Permit, issued in accordance with the Erosion Prevention and Sediment Control Ordinance, or a Work Order issued pursuant to Section 7.2.35. A Work Order must be obtained prior to the placement of roadway fill. No trees, stumps, or other perishable materials shall be buried at any location where a road is to be constructed. Approval for site clearing and grading may be issued by MSD and the Director of Works. A plan depicting existing and proposed grade elevations, limits of disturbance and erosion and sediment controls in accordance with the Jefferson County Erosion Prevention and Sediment Control Ordinance shall be submitted to MSD, Public Works, and the Planning Commission for review and approval. No land disturbance may begin until a Site Disturbance Permit has been issued by MSD. Once a preliminary subdivision plan is filed, clearing and site disturbing activities shall be limited to site investigation work, until such time as the Preliminary Subdivision Plan and Site Disturbance Plan are approved.

If the subdivision construction entrance is accessed from a roadway classified as a local street, the subdivider or applicant shall post an Encroachment Bond with Public Works. The bond shall be for potential damage to existing public roads caused by hauling or other work performed in conjunction with the site disturbance. The bond amount shall be \$5,000 or greater as may be stipulated by the Director of Works. No bond shall be required for construction entrances located off collector or arterial level roadways.

#### **7.2.30 Construction Plan**

No construction of improvements for a subdivision shall begin until the subdivider has obtained a work order from the Director of Works, and no work order shall be issued by the Director of Works except in accordance with an approved construction plan, either for the subdivision in its entirety or for sections thereof, in accordance with the following procedure:

- A. Time Limit - The construction plan shall be submitted to MSD and the Director of Works within one year of approval of the preliminary plan, unless an extension of approval is granted by the Commission prior to expiration.

- B. Preparation - The subdivider shall have the construction plan prepared by an engineer and land surveyor in conformance with the requirements of Part 4 and 6 and any variances and waivers which have received prior Commission approval in accordance with Sections 7.1.40 and 7.1.90.
- C. Submission to Other Agencies - The subdivider shall submit that part of the construction plan as required for approval or comment to interested agencies which shall consist of the following:
  - 1. Director of Works
  - 2. Metropolitan Sewer District
  - 3. The fire chief of the district having jurisdiction over property
  - 4. Health Department
  - 5. Utilities providing water, gas, electricity, and telephone service
  - 6. If the proposed subdivision abuts on a street maintained by the Commonwealth of Kentucky, then to the district engineer for the Kentucky Department of Transportation.
- D. Action Taken on Plan – Within 90 days of submittal of the construction plan and following notification of approval of the plan by M.S.D., the Director of Works shall take action on behalf of the Commission and shall notify the subdivider in writing of his action. The action of the Director of Works shall take one of the following forms:
  - 1. Approval - The plan may be approved as submitted. A copy of the approved construction plan shall be submitted to the Planning Commission. Approval of the plan shall be valid for one year and extensions of approval may be granted by the Director of Works. Construction may not proceed without a work order issued by the Director of Works in accordance with the approved plan. The subdivider's request for a work order shall be submitted to the Works Department and MSD no less than five working days prior to the day on which construction is intended to begin.
  - 2. Disapproval - The plan may be disapproved and the Director of Works shall state, in writing if requested by the subdivider, his reasons for disapproval. The subdivider must then submit a new construction plan if he wishes to create the subdivision.

#### **7.2.35 Conditions of Permit/Work Order and Authority of Inspectors**

It is a condition of the issuance of a Site Disturbance Permit or a Work Order that the property and operations on it be open to inspection by the Director of Works, MSD, and the Director of Planning and their authorized agents or representatives at all times and that the subdivider and his agents shall abide by any order of said inspector(s) for the purpose of assuring conformance with approved plans. Application for such Permit or Work Order and any operations pursuant thereto shall be deemed to constitute consent to these conditions. Refusal to abide by an order of an authorized inspector or to allow the required inspection shall be a violation of these regulations. Further, willful or persistent failure to abide by such orders shall constitute just cause for the respective director to refuse construction approval and issue a stop work order for the particular subdivision, in addition to any other remedies available.

#### **7.2.40 Record Plat**

Before transferring title to any portion of a subdivision a record plat must be recorded. The subdivider shall obtain Commission approval to be shown on the record plat prior to its recording. Approval may be obtained in accordance with the following procedures:

- A. Formal Application and Submission - The subdivider shall file formal application for subdivision approval on a form supplied by the Commission and shall submit therewith a record plat prepared by a land surveyor in conformance with the requirements of Part 7. If application for a record plat can not be submitted within one year of construction plan approval, extension of expiration date must be requested and obtained from the Commission.
- B. Review
  - 1. The staff of the Commission shall review the plat and approval may be given by any authorized staff member if the plat is in accordance with the approved preliminary plan.
  - 2. Land Development and Transportation Committee Review - The Land Development and Transportation Committee may approve a plat if it is not in conformance with the approved preliminary plan or if waivers are requested. The Committee may request Commission action when it is deemed appropriate.
- B. Commission Action - Within 90 days of receipt of the record plat, the Commission shall take action on the plat and notify the subdivider in writing of its action. Commission action shall take one of the following forms:
  - 1. Approval - The Commission may approve the plat as submitted. The Commission shall certify its approval on the face of the plat so that it may be recorded in the office of the County Clerk of Jefferson County.

2. Conditional Approval - The Commission may approve the plat conditionally and require amendments to the plat before granting full approval. If the subdivider does not submit an acceptable amended plat within 90 days of submission of the original plat, the plat shall be deemed to be disapproved by the Commission.
3. Postponement - The Commission may postpone its decision pending further study of the plat, but in no event shall its decision be postponed more than 90 days after submission of the plat.
4. Disapproval - The Commission may disapprove a plat and shall state in writing its reasons for disapproval. The subdivider must then reapply if he wishes to create the subdivision.

#### **7.2.45 Subdivider's Commitment and Bond Requirement**

Before Planning Commission approval may be shown on the record plat for recording, the subdivider shall deliver to the Director of Works the following items:

- A. Subdivider's Commitment - The subdivider shall be responsible for the installation, good repair and proper functioning of all improvements, including private roads, required by the approved construction plan and the installation of all reference monuments required by the record plat. Installation shall begin within a year after approval of the record plat, or within any one year extension granted by the Director of Works, and shall proceed in a manner which, in the judgment of the Director of Works, does not cause unreasonable harm, inconvenience or annoyance to any other property owner in or outside of the subdivision. The judgment of the Director of Works with respect to the manner of proceeding may not be questioned in any judicial proceeding by anyone except the subdivider, but said judgment when exercised in favor of the subdivider shall not constitute a defense to the subdivider in a judicial action against the subdivider by a complaining property owner. This obligation of the subdivider shall continue until the Director of Works, acting on behalf of the Planning Commission, has granted a release pursuant to Section 7.2.60. The required installations shall be completed and properly functioning within five (5) years from the date of which construction plans are approved, unless an extension is requested by the subdivider and approved by the Director of Works in writing. If eighty percent (80%) of the lots do not have a completed structure on them, the subdivider may request that the Director of Works, also acting on behalf of MSD, waive the eighty percent (80%) requirement and notify the Planning Commission of such waiver. If the waiver is granted, the subdivider or design engineer, acting on behalf of the subdivider, shall initiate the bond release process by sending a written request for bond release inspection to Public Works, MSD, the Health Department, and the local fire protection district. At any time after the date of approval of the record plat, the subdivider shall abide by any time limits which the Director of Works may specify in writing. This obligation shall be evidenced in writing signed by the subdivider on forms provided by the Director of Works.

- B. Security Required - There shall be filed with the Director of Works a bond instrument(s) approved by the Planning Commission and in the amounts determined by the Director of Works and MSD to insure fulfillment of the subdivider's commitment as set out above. Reduction of bond requirements shall not alter the subdivider's liability for fulfilling the obligations set out in Section 7.2.45 (1).

#### **7.2.50 Reduction of Bond Amount**

The amount of bond may be reduced by the Director of Works, on the recommendation of MSD and acting on behalf of the Planning Commission one time only. No bond shall be reduced below an amount necessary to insure the installation of remaining improvements and the good repair and proper functioning of all improvements at the time when eighty percent (80%) of the lots shown on the record plat have primary structures built on them and appropriate measures taken to prevent erosion and siltation. The reduced amount shall be determined by Public Works and MSD upon construction of the internal roadway infrastructure. The design engineer shall submit a certificate as set forth in Part 9.35 to Public Works and MSD.

#### **7.2.55 Bond Instruments**

The subdivider shall post a bond instrument with Public Works to insure proper installation of the road and drainage improvements. In addition, the subdivider shall post an encroachment and/or clearing and grading bond with Public Works and/or MSD. The bond instrument may be in the form of a letter of credit or certificate of deposit with a properly executed assignment and notice, in the total bond amount. If the subdivider posts a surety bond, \$3,000 of the total bond amount must be in the form of a letter of credit or a certificate of deposit with a properly executed assignment and notice.

#### **7.2.60 Subdivider's Release from Guaranteeing Proper Functioning**

A subdivider may request a release from responsibility for the good repair and proper functioning of required improvements by the Planning Commission in accordance with the following procedures:

- A. A written request for release shall be submitted to the Director of Works with copies sent to Metropolitan Sewer District, the Board of Health, the agency or official having jurisdiction with respect to fire protection, and the Mayor or designee if the subdivision is located within an incorporated city. This release may be requested after primary buildings have been built on 80% of all lots shown on the record plat and the street improvements (public and private), drainage facilities, but not including sidewalks on unimproved lots, have been installed in a good and workmanlike manner and are functioning in accordance with the approved construction plans.



- B. After eighty percent (80%) of the lots shown on the record plat have primary structures built on them, the subdivider may request bond release. Upon receipt of a written request from a subdivider, the appropriate agencies must inspect the subdivision and inform the subdivider in writing of approval or deficiencies within thirty (30) days. If deficiencies are noted, the subdivider shall have forty-five (45) days to complete the repairs and request re-inspection. The agency shall re-inspect and advise the subdivider of approval or further deficiencies within two weeks. Each agency shall provide original inspection reports and release approvals to Public Works. If the subdivider disagrees with the written comments received, an appeal may be filed with the Planning Commission. The Commission shall review this request through the Land Development and Transportation Committee.
- C. Upon obtaining a written release from all appropriate agencies, the Director of Works may release the subdivision bond completely or reduce the bond to an amount necessary to insure the installation of sidewalks, related drainage and any other right-of-way and easement improvements. This bond shall be considered as if it were a separate bond designed solely for that purpose to be released by the approval of the Director of Works with the approval of the appropriate agencies. If a sidewalk only, pavement only, or drainage only bond is required, it shall be of a limited time period to insure that all such improvements are constructed and fully functioning within two years of date of said bond. The eighty percent (80%) figure referred to above may be increased or reduced by the Director of Works, as specified in Section 7.2.45 (1).

#### **7.2.65 Builders Commitment**

A builder on any lot in the subdivision shall be responsible for the good repair and proper functioning of all installed improvements required by the approved construction plan and installed reference monuments required by the record plat and shall proceed with construction in a manner which is satisfactory to the Director of Works and the subdivider, and which does not cause unreasonable harm, inconvenience or annoyance to any other property owner in or outside of the subdivision. The judgment of the Director of Works or that of the subdivider with respect to the manner of construction may not be questioned in any judicial proceeding by any one except the builder, but said judgment when exercised in favor of the builder, shall not constitute a defense to the builder in a judicial action against the builder by a complaining property owner. An applicant for a building permit shall execute and deliver written evidence of his awareness and commitment to fulfill this obligation on forms approved by the Director of Works.

The builder of each lot in a subdivision is required to grade the lot so that cross-lot drainage is in conformance with the approved Composite Drainage Plan for the subdivision and all drainage from the lot is directed to a public drainage facility in an easement or right-of-way.

### **7.2.70 Builder's Bonds Required**

At the time of the subdivider's release from guaranteeing proper functioning of required improvements pursuant to Section 2.60, each builder is required to post with the Director of Works and/or M.S.D. a Builder's Bond prior to the issuance of the building permit to insure the fulfillment of the obligations set out in Section 7.2.65 and to insure compliance with the tree canopy requirements and sidewalk requirements in accordance with Part 4. The bond shall be in the amount of \$2,500.00 or an appropriate amount as determined by the Director of Works, the Director of Planning, and/or M.S.D. In the event a building permit has been issued on unimproved lots that are sensitive to generation of drainage related damages to existing development at the time of release of the subdivider's performance bond, a \$2,500.00 bond or an appropriate amount shall be posted on those lots by the builder. "Unimproved lots" refers to those on which no primary building has been constructed.

### **7.2.75 Release of Builder's Bond**

Application for release of a builder's bond (7.2.70) may be made by filing a certificate with the Planning Commission and the Director of Works or M.S.D. in conformance with Section 7.9.42 bearing notice that false statements made therein are punishable. Within 60 days of receipt of application for release of a builders bond, the Director of Planning, Director of Works or M.S.D. may make an inspection of the subdivision and shall grant the release where it appears to his reasonable satisfaction that the required improvements are installed and are in good repair and functioning properly on and adjacent to the lot and that there is no reason to believe that construction on the lot has or will cause malfunctioning of installed improvements in other areas.

### **7.2.80 Property Owner's Obligation**

It is the obligation of a property owner in the subdivision not to damage, alter or destroy the required improvements or reference monuments and not to allow any condition or activity on his property that will impair the proper functioning of the required improvements. For violation of this provision, the property shall be subject to the imposition of a lien for the amount necessary to remedy the violations which may be enforced in the same manner that mortgages are enforced, in addition to other remedies available.

### **7.2.85 Enforcement and Remedying of Obligations**

If, at any time following the period allowed to the subdivider to complete his obligations (7.2.45 (1)), the Director of Works and/or MSD finds that the required improvements and reference monuments have not been installed or that they are not in good repair or that they are not functioning properly and also finds that it does not appear to his satisfaction that they will be completed within a reasonable time considering the potential for harm, inconvenience or annoyance to others, he shall recommend that the Planning Commission declare the obligation of the subdivider, as well as the obligation of any others who may appear to him to be responsible, to be in default.

Upon declaration of default, the Director of Works and/or MSD shall collect such amounts from bonds or otherwise as is required to remedy the default. In the event that amounts available from bonds are sufficient to cover the costs of remedying the default, such bonds shall be collected and used in full or in such proportion as the Director of Works or MSD determines to be just and equitable based upon apparent responsibility therefor. Anyone claiming to be aggrieved by such determination shall have as his exclusive remedy a cause of action for contribution or indemnity against the parties responsible for the default. The determination of the Director of Works or MSD shall not be used as evidence in support of or against responsibility in such cause of action, and he shall not be made a party thereto.

In the event that the Planning Commission has authorized bond forfeiture for any section(s) of a subdivision for which the applicant is responsible, no additional sections of the subdivision may be recorded until such time as the Metro Public Works Department notifies the Planning Commission that the roadway and drainage improvements for the previously recorded section(s) in accordance with the approved construction plans have been completed.